

TITLE 5. COMMUNITY AFFAIRS  
CHAPTER 26. PLANNED REAL ESTATE DEVELOPMENT FULL DISCLOSURE ACT REGULATIONS

*N.J.A.C. 5:26*

§ 5:26-1.1 Introduction

The Planned Real Estate Full Disclosure Act (Chapter 419, P.L. 1977, *N.J.S.A. 45:22A-21* et seq.) became effective November 22, 1978. These rules have been adopted to enable the Division of Codes and Standards to implement the Act and to enable owners of property affected to more easily and more fully comply with the requirements of the Act.

§ 5:26-1.2 Affirmative determination

(a) The Act provides for the issuance of an order of registration upon an affirmative determination of the Division that:

1. The developer can convey or cause to be conveyed the lots, parcels, units or interests offered for disposition, if the purchaser complies with the terms of the offer; and
2. There is reasonable assurance that all proposed improvements can be completed as represented; and
3. The advertising material and the general promotional plan are not false or misleading and comply with the standards prescribed by the Division in subchapter 5 hereof and afford full and fair disclosure; and
4. The developer, its officers and/or principles have not been convicted of a crime involving any aspect of the real estate sales business in this State, the United States, or any other state or foreign country within the past 10 years; and
5. The developer, its officers and/or principals have not been subject to any permanent injunction or final administrative order restraining a false or misleading plan involving real property disposition, the seriousness of which in the opinion of the Agency warrants the denial of registration; and
6. The public offering statement requirements have been satisfied.

§ 5:26-1.3 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Act" means the Planned Real Estate Development Full Disclosure Act, Chapter 419, P.L. 1977, *N.J.S.A. 45:22A-21* et seq., as amended; provided, however, that "act" means the Retirement Community Full Disclosure Act, P.L. 1969, c.215 (*N.J.S.A. 45:22A-1* et seq.) when applied to any portion of a retirement community issued a notice of filing or registered pursuant thereto.

"Advertising" means and includes the publication or causing to be published of any information offering for disposition or for the purpose of causing or inducing any other person to purchase an interest in a planned real estate development or retirement community, including the sales contract to be used and any photographs or drawings or artist's representation of physical conditions or facilities on the property existing or to exist by means of any:

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1. Newspaper or periodical;
2. Radio or television broadcast;
3. Written, printed or photographic matter;
4. Billboards or signs;
5. Display of model houses or units;
6. Material used in connection with the disposition or offer of the development by radio, television, telephone or any other electronic means; or
7. Material used by developers or their agents to induce prospective purchasers to visit the development, particularly vacation certificates which require the holders of such certificates to attend or submit to a sales presentation by the developer or his agents.

"Advertising" does not mean: Stockholder communication such as annual reports, interim financial reports, proxy materials, registration statements, securities prospectuses, applications for listing securities on stock exchanges, and the like; all communications addressed and relating to the account of any person who has previously executed a contract for the purchase of the developer's lands, except when directed to the sale of additional lands.

"Agency" means the Division of Codes and Standards of the State Department of Community Affairs.

"Blanket Encumbrance" means a trust deed, mortgage, judgment or other lien or encumbrance including an option or contract to sell or a trust agreement affecting a development or retirement community of more than one lot, parcel, unit or interest therein, but does not include any lien or other encumbrance arising as the result of the imposition of any tax assessment by any public authority.

"Commissioner" means the Commissioner of Community Affairs.

"Common promotional plan" means any offer for the disposition of lots, parcels, interests or units of real property by a person or group of persons acting in concert, where such lots, parcels, units or interests are contiguous, or are known, designated or advertised as a common entity or by a common name.

"Conversion" means any change with respect to a real estate development, subdivision, apartment complex or other entity concerned with the ownership, use or management of real property which would make such entity a planned real estate development or retirement community.

"Director" means the Director, Division of Codes and Standards, Department of Community Affairs.

"Disposition" means any sale, contract, lease, assignment, or other transaction concerning a planned real estate development or retirement community.

"Division" means the Division of Codes and Standards, Department of Community Affairs.

"Interest" means any and all rights to use and enjoy any incident of ownership of any part of a planned real estate development or retirement community.

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"Material change" means, but is not limited to, any significant change in the size or character of the development or interest being offered or anything having a significant effect on the rights, duties or obligations of the developer or purchaser.

"Nonbinding reservation agreement" means an agreement between the developer and a prospective purchaser which may be cancelled without penalty by either party upon written notice at any time prior to the formation of a contract for the disposition of any lot, parcel, unit or interest in a planned real estate development or retirement community.

"Offer" means an inducement, solicitation, advertisement, or attempt to encourage a person to acquire a lot, parcel, unit or interest in a planned real estate development or retirement community.

"Person" shall be defined as in *R.S. 1:1-2*.

"Planned Real Estate Development" or "development" means any real property situated within this State, whether contiguous or not, which consists of, or will consist of, separately owned areas, irrespective of form, be it lots, parcels, units or interests, and which are offered or disposed of pursuant to a common promotional plan, and providing for common or shared elements or interests in real property. This definition shall include, but not be limited to, "planned unit development" and "planned unit residential development" as defined in the Municipal Land Use Law, P.L. 1975, c. 291 (*N.J.S.A. 40:55D-6*). This definition shall not include any form of timesharing subject to the New Jersey Real Estate Timeshare Act, P.L. 2006, c. 63.

"Purchaser" or "Owner" means any person or persons who acquire a legal or equitable interest in a lot, parcel, unit or interest in a planned real estate development or retirement community and shall be deemed to include a prospective purchaser or prospective owner.

"Retirement Community" means any land which is divided or proposed to be divided into 10 or more lots, whether contiguous or not, for the purpose of sale or lease as part of a common promotional plan where such is advertised or represented as a retirement community or as a community primarily for retirees or elderly persons or where there is a minimum age limit tending to attract persons who are nearing age of retirement, whether located within this State or without.

"State" means the State of New Jersey.

§ 5:26-1.4 Administration

The Act shall be administered by the Division of Codes and Standards of the State Department of Community Affairs, through the Bureau of Homeowner Protection. All correspondence and inquiries may be addressed to the Bureau of Homeowner Protection, PO Box 805, Trenton, New Jersey 08625-0805.

§ 5:26-2.1 Registration required

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Except as otherwise provided in this subchapter, no developer may offer or dispose of any interest in a planned real estate development or retirement community prior to the registration of such planned real estate development or retirement community with the Agency.

§ 5:26-2.2 Exemptions

(a) Unless the method of disposition is adopted for purposes of evasion, the provisions of these rules shall not apply to offers or dispositions:

1. By an owner for his or her own account in a single or isolated transaction;
2. Wholly for industrial, commercial, or other non-residential purposes;
3. Pursuant to court order;
4. By the United States, by this State or any of its agencies or political subdivisions;
5. Of real property located without the State;
6. Of cemetery lots or interests;
7. Of less than 100 lots, parcels, units or interests; provided, however, that, with regard to condominiums, cooperatives or retirement communities, this exemption shall not apply, irrespective of the number of lots, parcels, units or interests offered or disposed of;
8. Of developments where the common elements or interests, which would otherwise subject the offering to the Act, are limited to the provision of unimproved, unencumbered open space;
9. In a development composed wholly of rental units, where the relationship created is one of landlord and tenant;
10. Where the offering is not part of a larger offering and consists of fewer than 10 lots, parcels, units or interests, or where the offering consists entirely of units affordable to persons of low or moderate income, as determined in accordance with the "Fair Housing Act," P.L. 1985, c.222 (*N.J.S.A. 52:27D-301 et seq.*), and legally restricted to assure continued affordability in accordance with *N.J.A.C. 5:14-4*, *N.J.A.C. 5:80-26*, and/or *N.J.A.C. 5:92-12*, or where the Agency otherwise finds that the enforcement of the Act is not necessary in the public interest or for the protection of purchasers by reason of the small amount of the purchase price, or the limited character of the offering, or the limited nature of the common or shared elements; provided, however, that as a condition of any exemption granted under this paragraph, the developer shall disclose to prospective purchasers, in a format acceptable to the Agency, such information and documentation as the Agency may deem appropriate, including, without limitation, the following:
  - i. The name, address and telephone number of the developer and of any designated agent;
  - ii. The total number of units proposed for the entire development and the scheduled completion dates;
  - iii. The total number of units currently being offered and the date by which the current phase of construction is scheduled to be completed;

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- iv. The types of units being offered (for example, detached homes, townhouses, apartments, non-residential units) and the number of units being offered in each category;
  - v. Whether or not there is a flood hazard zone on or adjacent to the site;
  - vi. Information as to who will control the association and when control by the homeowners will begin;
  - vii. A statement as to who may use common facilities;
  - viii. Information as to how a prospective purchaser may review the declaration of covenants and restrictions, the by-laws of the association, and the rules and regulations, if any, governing the operation of the development;
  - ix. A list of management contracts that are or will be in effect and information as to how a prospective purchaser may review any current management contract or proposed maintenance agreement;
  - x. A statement of the relationship of the developer to the service provider, if any;
  - xi. The amount that it is reasonably anticipated that a prospective purchaser would be required to pay, currently and in the near future, for the operation and maintenance of the common facilities, including the amount set aside for reserves, and information as to how a prospective purchaser may review the current budget; and
  - xii. Information as to how a prospective purchaser may review a copy of the final plat plan, as approved and signed by the local planning board, showing all amenities, facilities and improvements; or
11. Of any form of timesharing.

§ 5:26-2.3 Requests for exemption

(a) Any person who believes that a planned real estate development or retirement community may be exempt from the provisions of the Act, or who is contemplating establishment of a planned real estate development or retirement community that he or she believes may be exempt, may apply to the Director for a Letter of Exemption.

1. Such application shall be in writing and shall list the reasons why such planned real estate development or retirement community, or proposed planned real estate development or proposed retirement community, may be exempt from the Act.

2. An application for exemption pursuant to N.J.A.C. 5:26-2.2(a) shall be accompanied by a fee of \$ 141.00.

i. No fee shall be charged for any development consisting entirely of units legally restricted to occupancy by households of low or moderated income.

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(b) In the event the Director shall determine that such planned real estate development or proposed retirement community is exempt from the Act, he shall issue a Letter of Exemption setting forth the facts upon which his determination is based.

(c) In the event the Director shall determine that such planned real estate development or retirement community or proposed planned real estate development or proposed retirement community is not exempt from the provisions of the Act, he shall deny the request for exemption setting forth the facts upon which his determination is based and shall notify the applicant of his findings.

(d) Any person who is aggrieved by the determination by the Director pursuant to (a) and (b) above is entitled to a hearing on such determination provided said hearing is requested, in writing, no later than 15 days from the date of such determination.

(e) The Director shall issue his determination as to whether a planned real estate development or retirement community is exempt or not within 30 days of the receipt of the request.

§ 5:26-2.4 Application for registration; submission and fees

(a) An application for registration shall consist of a statement containing the items set forth in *N.J.A.C. 5:26-3* and shall be submitted in the manner and form provided therein, together with the filing fee in the amount of \$ 1,361, plus \$ 136.00 per lot, parcel, unit or interest, made payable to the Treasurer, State of New Jersey.

1. In the event that lots, parcels, units or interests are added during registration, an additional fee of \$ 136.00 per lot, parcel, unit or interest added shall be paid. There shall be no refunds for deletions.

2. No fee shall be charged for units legally restricted to occupancy by households of low or moderate income.

(b) In the event that the Agency determines that an additional engineering study by an engineer designated by the Agency is necessary because of the inadequacy of the engineering survey submitted by the developer, the developer shall pay to the Agency an additional fee in the amount of the cost to the Agency of such additional engineering survey.

§ 5:26-2.5 Notice of filing

Upon receipt of an application for registration in proper form, accompanied by payment of the required filing fee, the Agency shall, within 10 business days, issue a notice of filing to the applicant. The notice of filing shall not be construed as an approval of the application for registration or any portion thereof.

§ 5:26-2.6 Order of registration

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Within 90 days from the date of the notice of filing or notice of correction as provided below, the Agency shall enter an order registering the development if the Agency affirmatively determines that the requirements of *N.J.A.C. 5:26-1.2* and Section 9 of the Act have been met.

§ 5:26-2.7 Notice of correction

When the Agency determines, upon inquiry and examination, that any of the requirements of *N.J.A.C. 5:26-1.2* and Section 9 of the Act have not been met, the Agency shall notify the applicant that the application for registration must be corrected in such particulars within 30 days.

§ 5:26-2.8 Order of rejection

(a) In the event the requirements of the notice of correction are not met within the time allowed, the Agency may enter an order rejecting the registration which shall include the findings of fact upon which the order is based.

(b) The Order of Rejection shall not take effect for a period of 20 days from the expiration of the 30 day period mentioned in *N.J.A.C. 5:26-2.7*.

§ 5:26-2.9 Petition for reconsideration

(a) Upon the issuance of an Order of Rejection, the applicant shall have the right to file a petition for a reconsideration with the Agency and shall be entitled to a hearing thereon, provided the petition for reconsideration shall be filed within 20 days of the Order of Rejection.

(b) In the event a petition for reconsideration is filed by the applicant, as provided, the Order of Rejection shall not take effect until such time as the hearing has been held and a determination rendered.

§ 5:26-2.10 Automatic registration

The planned real estate development or retirement community shall be deemed to be registered pursuant to *N.J.A.C. 5:26-2.6*, if within 90 days of the notice of filing or notice of correction, the Agency has not issued an Order of Rejection or the applicant has not consented to a delay in writing.

§ 5:26-2.11 Order of revocation

(a) The Agency may revoke a registration after notice and upon finding of fact that the developer has:

1. Failed to comply with the terms of a cease and desist order;

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2. Been convicted, subsequent to the filing of the application for registration, in any court, of a crime involving fraud, deception, false pretenses, misrepresentations, false advertising, dishonest dealing or other like offenses;

3. Disposed of, concealed or diverted any funds or assets of any person so as to defeat the rights of purchasers;

4. Failed faithfully to perform any stipulation or agreement made with the Agency as an inducement to grant or reinstate any registration, to approve any promotional plan or public offering statement, or to rescind or modify any order or rule issued by the Agency.

5. Advertised the planned real estate development or retirement community, or responded to applications for the planned real estate development or retirement community, in a manner which was discriminatory on the basis of marital status, sex, race, color, creed, religious principles, national origin, ancestry, affectional or sexual orientation, or on any other basis that may be prohibited under the Law Against Discrimination (*N.J.S.A. 10:5-1 et seq.*);

6. Willfully violated any provision of the Act or of these regulations; or

7. Made an intentional misrepresentation or concealed a material fact in an application for registration.

(b) The Agency may, after compliance with the notice requirements of (a) above, and finding of fact that a violation for which revocation could be ordered has occurred, issue a cease and desist order in lieu of an order of revocation.

(c) A developer to whom a notice of revocation or a cease and desist order is issued shall have the right to contest the notice or order in an administrative hearing, in accordance with *N.J.A.C. 5:26-11.3*.

§ 5:26-2.12 Cease and desist orders; injunctions

(a) The Agency may issue an order requiring a person to cease and desist from an unlawful practice or an order requiring him to take such other affirmative action as in the judgment of the Agency will carry out the purposes of the Act or these regulations upon the Agency's determination, after notice and hearing, that a developer has:

1. Violated any provision of the Act;

2. Directly or through an agent or employee knowingly engaged in any false, deceptive or misleading advertising, promotional or sales methods to offer or dispose of a unit;

3. Made any material change in the plan of disposition or development of the subdivision subsequent to the order of registration without obtaining prior approval from the Agency;

4. Disposed of any lot, parcel, unit or interest in a planned real estate development or retirement community which has not been registered with the Agency; or

5. Violated any lawful order, rule or regulation of the Agency.

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(b) Upon the determination of the Agency in writing, based on a finding of fact that the public interest will be irreparably harmed by delay in issuing an order, it may issue a temporary cease and desist order including therein a provision that, upon request, a hearing will be held within 10 days of such request to determine whether or not the temporary cease and desist order shall become permanent. A copy of any temporary cease and desist order shall be sent to the developer by certified mail.

(c) The Agency may, if it appears that a person has engaged or is about to engage in an act or practice constituting a violation of a provision of the Act or a rule, order or regulation of the Agency, bring an action in Superior Court to enjoin the acts or practices and to enforce compliance with the Act or regulations herein.

§ 5:26-2.13 Annual report

Within 30 days after the anniversary date of the latest Order of Registration and while the developer retains any interest in the development or retirement community, the developer shall file on a form designated by the Agency an annual report reflecting any material changes in information contained in the original application for registration. This shall not diminish the obligation of the developer to notify the Agency of material changes as they occur. The annual report shall contain a yearly audit of association funds.

§ 5:26-2.14 Order terminating responsibility

Upon a determination by the Agency that an annual report is no longer necessary for the protection of the public interest or that the developer no longer retains any interest and no longer has any contractual, bond or other obligations in the development or retirement community, the Agency shall issue an order terminating the responsibilities of the developer under the Act.

§ 5:26-2.15 Registration in this State, other states or with the Federal Government

Any developer who desires to register a planned real estate development or retirement community which has been registered in this State, in other states or with the Federal Government and the requirements of that registration are substantially similar to those imposed by this chapter, may submit a certified copy of the approved application for registration filed in such other jurisdiction or with such other state agency or with the Federal Government and a certified copy of the letter of approval or other written approval thereof. In the event the Agency finds, upon review, that the approval substantially conforms to the standards and requirements imposed by the Act and by this chapter, the Agency may register such planned real estate development or retirement community; provided however, prior to such registration the Agency may require submission of such supplemental documents and information as it may deem necessary.

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§ 5:26-2.16 Consolidated filing

A developer may register additional property pursuant to the same common promotional plan as those previously registered by the Agency by submitting another application providing such additional information as may be necessary to register the additional lots, parcels, units or interests.

§ 5:26-2.17 P.U.D. and P.U.R.D.

(a) The developer of a planned unit development or planned unit residential development shall register the development pursuant to *N.J.A.C. 5:26-3* hereof regardless of whether the developer intends to offer the lots, parcels, units or interests to the public or to a builder or builders or to another developer.

(b) In the event the developer offers or intends to offer a number of lots, parcels, units or interests in a P.U.D. or P.U.R.D. to a builder or builders who will construct dwelling units thereon with the intention of offering them to the public, the developer and the builder may submit a joint application for registration or the developer may submit an application for registration and file an amendment pursuant to *N.J.A.C. 5:26-3* hereof when the lots, parcels, units or interests are conveyed to the builder.

(c) The items requested in *N.J.A.C. 5:26-3.1(a)* 1, 3, 4, 16, 17, 19 and 20 shall be submitted for both the developer and the builder.

(d) The warranty provisions of *N.J.A.C. 5:26-7* shall be provided by the person who constructs the particular improvements so warranted.

§ 5:26-3.1 Contents of application for registration

(a) The application for registration shall contain the following documents and information:

1. An irrevocable appointment of the Agency to receive service of any lawful process in any noncriminal proceeding arising under the Act against the developer or agents of the developer;

2. The states or other jurisdiction, including the Federal Government, in which an application for registration or similar documents have been or will be filed and any order, judgment or decree entered in connection therewith by the regulatory authorities in each of the jurisdictions or by any court or administrative body thereof;

3. The name, address and principal occupation for the past five years of every officer of the applicant or person occupying a similar status and of any person performing similar management functions; the extent and nature of any such person's interest in the applicant or the development as of a specified date within 30 days prior to the filing of the application for registration;

4. Copies of the articles of incorporation, with all amendments thereto, if the developer is a corporation; copies of all instruments by which the trust is created or declared, if the developer is a trust; copies of the articles of partnership or association and all other organization papers if the developer is organized under another form. In the event the developer is not the legal title holder to

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the property upon which the development is or is to be constructed the above documents shall be submitted for both the developer and the legal title holder;

5. A legal description by metes and bounds or other acceptable means of the lands to be registered, together with a map showing the proposed or actual subdivision and showing the dimensions of the lots, parcels, units or interests, as available, and the relation of such lands to existing streets, roads and other improvements. The aforesaid map shall be drawn to scale, signed and sealed by a licensed professional engineer or land surveyor;

6. Copies of the deed or other instrument establishing title in the developer and title search, title report or title certificate or binder issued by a licensed title insurance company;

7. A statement concerning any litigation, orders, judgments or decrees which might affect this offering;

8. In the event that the application for registration is for the conversion of a vacant building, an affidavit to that effect shall be submitted by the developer;

9. In the event that the application for registration is for the conversion of a building occupied by residential tenants, an affidavit of service of the proposed Public Offering Statement as required by *N.J.A.C. 5:26-9.3* shall be submitted;

10. In the event that the application for registration is for a newly-constructed property, evidence of registration under the New Home Warranty and Builders Registration Act (*N.J.S.A. 46:3B-1 et seq.*) shall be submitted;

11. A statement that the lots, parcels, units or interests in the development will be offered to the public and sold or alienated without regard to marital status, sex, race, color, creed, religious principles, national origin, ancestry, affectional or sexual orientation, or any other basis prohibited by the Law Against Discrimination (*N.J.S.A. 10:5-1 et seq.*);

12. A statement of the present condition of access to the development and the existence of any adverse conditions that affect the development that are known, should be known or are readily ascertainable;

13. Copies of all contracts and agreements which the purchaser may be required to execute in connection with this offering;

14. In the event there is or will be a blanket encumbrance affecting the development or a portion thereof, a copy of the document creating it and a statement of the consequences upon a purchaser of a failure of the person bound to fulfill the obligations under the instrument and the manner in which the interest of the purchaser is to be protected in the event of such eventuality;

15. Two copies of the proposed public offering statement;

16. A current financial statement of the developer and any predecessor, parent or subsidiary company, including but not limited to a current profit and loss statement and balance sheet audited by an independent public accountant;

17. A statement concerning any adjudication of bankruptcy during the last five years against the developer, its predecessor, parent or subsidiary company and any principal owing more than

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10 percent of the interests in the development at the time of the filing of the application for registration. This requirement shall not extend to limited partners or those whose interests are solely those of investors;

18. Copies of all easements and restrictions, whether of record or not;

19. A statement as to the status of compliance with all the requirements of all laws, ordinances, regulations of governmental agencies having jurisdiction over the premises, including but not limited to any permits required by the Department of Environmental Protection, together with copies of all necessary Federal, State, county and municipal approvals;

20. A statement that the developer, its officers or principals have never been convicted of a crime involving any aspect of real estate sales business in this State, the United States or any other state or foreign jurisdiction and that the developer has never been subject to any permanent injunction or final administrative order restraining a false or misleading promotional plan involving real property disposition;

21. An affidavit, signed by the developer, that the contents of the application are true and accurate;

22. Such other additional information as the Division may require in individual cases after review of an application for registration to assure full and fair disclosure;

23. A listing of the units in the building together with the current monthly rental thereof.

§ 5:26-3.2 Form of the application for registration

(a) An application for registration shall be submitted in the following form:

1. Two sets of the information and documents required to be filed shall be submitted in separate binders, fastened at the top in such a manner as to permit the reading of each page without requiring removal. The two required copies of the Public Offering Statement shall be submitted in separate binders. The items set forth in *N.J.A.C. 5:26-3.1(a)2* need not be submitted for developments of 24 or fewer units.

2. All information and documents shall be arranged in the order set forth in *N.J.A.C. 5:26-3.1*;

3. Each binder shall note the name and address of the developer and the name and address of the person responsible for the preparation of the application on the front cover;

4. The first page shall be a table of contents;

5. The right side of the first page of each section shall bear a tab numbered in conformity with the table of contents. Each tab shall be visible without the necessity of lifting any other tab;

6. If a section or document is omitted, a single sheet of paper, properly tabbed, shall be inserted containing a description of what is omitted and an explanation as to the reason for the omission;

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7. With the exception of maps, drawings, surveys and the like, all documents shall be no smaller than 8 1/2 x 11 inches nor more than 8 1/2 x 14 inches.

(b) Plats, maps or surveys which are too bulky to include in a binder may be submitted in a separate folder and a list of such shall be included in the binder.

§ 5:26-3.3 Amendment of the application for registration

(a) Developers shall immediately report to the Agency any changes in the information or documents contained in the application for registration, with a request for an amendment of the application of registration.

(b) No changes in the substance or intent of the promotional plan or the plan of disposition or development shall be made unless such change has been approved by the Agency by way of amendment to the application for registration.

§ 5:26-3.4 Review of requests for amendment

The Agency shall process and review requests for amendments of an application for registration in accordance with the standards and procedures established in this chapter for review of application for registration. Requests for amendment, other than price changes and advertising, shall be accompanied by a fee of \$ 250.00.

§ 5:26-3.5 Public inspection of application for registration

The Agency shall maintain a copy of every application for registration together with all amendments thereto that have been approved and shall make them reasonably available for public inspection during ordinary business hours at the Agency's office.

§ 5:26-3.6 Copies of the application for registration; fee

(a) The Agency shall comply with all reasonable requests for copies of an application for registration, together with all amendments thereto.

(b) The Agency shall charge a fee for such copies equal to the cost of reproduction of the application for registration, with amendments, plus any cost of postage.

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§ 5:26-4.1 Public offering statement required

(a) No developer may dispose of any lot, parcel, unit or interest in a planned real estate development or retirement community unless said developer delivers to the purchaser a current public offering statement on or before the contract date.

1. The Public Offering Statement for new construction applications may be prepared in two parts. Part I shall be in narrative form and shall consist of the information required by *N.J.A.C. 5:26-4.2(a)*1 through 6, 7i, 8, 9i, 10, 12, 14 and 15 through 23. Part II shall consist of the documents required by *N.J.A.C. 5:26-4.2(a)*7ii through 9ii, 11, 13 and 22.

2. For new construction applications containing 24 or fewer units, the information specified in *N.J.A.C. 5:26-4.2(a)*4 need not be included.

3. Public Offering Statements for the conversion of existing buildings shall include all information required by this subchapter and *N.J.A.C. 5:26-9*.

(b) The public offering statement shall disclose fully and accurately the characteristics of the development and the lots, parcels, units or interests offered and shall make known to prospective purchasers all unusual and material circumstances and features affecting the development. The public offering statement shall be in clear and concise language and combine simplicity and accuracy in order to fully advise purchasers of their rights, privileges, obligations and restrictions.

(c) The Agency may require the developer to alter or amend the proposed public offering statement in order to assure full and fair disclosure to prospective purchasers and may require the revision of a public offering statement which it finds to be unnecessarily complex, confusing or illegible.

(d) The developer shall provide copies of the Public Offering Statement, Part I, at no charge to prospective purchasers upon their request. In any event, the Public Offering Statements, Parts I and II, must be provided at, or prior to, the time a contract is executed, at no charge to the prospective purchaser;

(e) A Public Offering Statement shall not be deemed current unless it contains all amendments approved by the Agency.

§ 5:26-4.2 Contents of public offering statement

(a) The public offering statement shall contain the following information:

1. The name and principal address of the developer;

2. A narrative description of the interest to be offered including but not limited to the rights and obligations of purchasers in their lots, parcels, units or interests and in the common elements;

3. A narrative description of the development including but not limited to the total number of lots, parcels, units, or interests in the offering, the total number of lots, parcels, units, or interests to be constructed in the entire project, the present and proposed access to the development and the anticipated completion date of the present offering and of the entire development;

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4. Relevant community information including but not limited to the existence and location of hospitals, health and recreational facilities, schools, fire and police protection, places of worship, streets, water supplies, levees, drainage control systems, irrigation systems, customary utilities, etc.;

5. A statement of the nature, type and capacity of improvements to be installed by the developer and the estimated date of completion and whether they will be dedicated to the public use. In the event the developer is to construct common recreation or community facilities a statement, together with any plans, of the nature, size, capacity and amenities of such recreational and community facilities such as, but not limited to, air conditioning, furniture, supplies, carpet or drapes, their location within the development and whether or not the use thereof will be limited to owners of the lots, parcels, units or interests, or whether the common recreational or community facilities will be available for use by the general public;

6. A statement of the proposed method of operation and management of the common elements and facilities;

7. The following documents:

i. A statement as to who will control the operation and management of the common elements and facilities and when control will be vested in any association, trust or other entity;

ii. Copies of any actual or proposed management or service contract, lease or agreement affecting the use, maintenance or access of or to any or all of the common elements or facilities;

8. A copy of the proposed budget for the operation and maintenance of the common elements and facilities based on full occupancy, together with the proposed annual assessment and the monthly charges to be assessed to each type of unit. The budget shall specifically state the amount set aside as reserves for the replacement of the common elements and facilities and shall be accompanied by a letter of adequacy certified by an independent public accountant or other independent expert and by a letter of adequacy of the hazard and liability insurance coverage certified by an independent insurance agent or broker;

9. The following documents:

i. A description of any management or service contract, lease or other contract or agreement affecting the use, maintenance or access of or to any or all of the common elements or community facilities together with a statement as to the effect of each upon the purchaser;

ii. Copies of any management or services contract, lease or agreement affecting the use, maintenance or access of or to any or all of the common elements or facilities;

10. A statement of the relationship, if any, between the developer and the management or servicing agent or firm;

11. A copy of the master deed, declaration of covenants and restrictions and/or any other documents of creation that have been or will be recorded, and the date and book and page thereof;

12. A statement explaining any restrictions on occupancy, the right of alienation and the right of alteration of the lot, parcel, unit or interest;

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13. Copies of the instruments that will be delivered to purchasers to evidence their interest in the development;

14. A statement that all monies paid to the developer prior to closing will be held in a separate trust account and the name and location of the institution where the trust account is maintained and the name and address of any trust or escrow agent, until closing or termination of the contract or until a bond or other guarantee acceptable to the Agency is provided. In no event shall the escrow be released before the expiration of the seven-day rescission period;

15. The significant terms of any encumbrances, easements, liens and restrictions, including but not limited to zoning regulations, affecting such lands and each lot, parcel, unit or interest, as well as the use and zoning of adjoining lands;

16. A statement as to whether the property or any portion thereof is regularly or periodically subject to natural forces that would tend to adversely affect the use or enjoyment of the property and whether the property or any portion thereof is located in a Federally designated flood hazard area;

17. A statement as to whether the property or any portion thereof is subject to man made forces that would tend to adversely affect the use or enjoyment of the property such as, but not limited to, the property's proximity to airports or flight paths, railroads, noisy or polluting industrial use or other similar forces. This statement shall also include the text of the notice required to be given to new home purchasers pursuant to *N.J.S.A. 46:3C-8* and shall indicate that the rights of the purchaser set forth in that notice are in addition to, and not in lieu of, the rights established by the Planned Real Estate Development Full Disclosure Act and these rules;

18. A statement of all existing taxes affecting any lot, parcel, unit or interest, as well as the estimated real estate tax on each lot, parcel, unit or interest, showing the value thereof and the tax ratio and tax rate for the last three years;

19. A statement of all existing or proposed special taxes or assessments of record and who shall be responsible for payment thereof;

20. A statement of the estimated title closing or settlement costs to be paid by the purchaser that are charged by the developer or the agent of the developer;

21. A statement explaining the warranty or guarantee given by the developer and the rights and remedies of the purchaser;

22. A statement, printed in 10-point bold face type or larger, conspicuously located and simply stated, that the purchaser has the right to cancel any contract or agreement for the purchase of any lot, parcel, unit or interest in the development, without cause, by sending or delivering a written notice of cancellation to the developer or the agent of the developer by midnight of the seventh calendar day following the day on which such contract or agreement is executed and that all monies paid will be promptly refunded; and

23. A statement explaining the nature, type and amount of hazard and liability insurance supplied or to be supplied by the developer or association and what the insurance covers, an explanation of the nature and type of hazard and liability insurance recommended to be carried by the owner and a statement of the availability and necessity of flood hazard insurance.

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§ 5:26-4.3 Form

(a) The public offering statement shall be in the following form:

1. A front cover shall contain the name and address of the developer, the name and location of the planned real estate development or retirement community, the effective date of the offering statement, which shall be the date of registration by the Agency, and shall contain the following statement in 10-point bold type:

NOTICE TO PURCHASERS

THE PUBLIC OFFERINGS STATEMENT IS FOR INFORMATIONAL PURPOSES ONLY. PURCHASERS SHOULD ASCERTAIN FOR THEMSELVES THAT THE PROPERTY OFFERED MEETS THEIR PERSONAL REQUIREMENTS. THE NEW JERSEY DIVISION OF CODES AND STANDARDS HAS NEITHER APPROVED NOR DISAPPROVED THE MERITS OF THIS OFFERING. BE SURE TO READ CAREFULLY ALL DOCUMENTS BEFORE YOU SIGN THEM.

2. A reasonably detailed table of contents showing the subject matter of the various sections, subsections or documents contained in the public offering statement and the page number on which each appears.

3. As set forth in N.J.A.C. 5:26-4.1(a), with respect to new construction projects. Part I of the Public Offering Statement shall be in narrative form and, in addition to the items set forth in N.J.A.C. 5:26-4.1(a), shall contain an explanation that the documents referred to in Part I will be provided to prospective purchasers at or prior to the time a contract is executed.

4. The public offering statement shall be printed on good quality unglazed white paper no smaller than 8 1/2 x 11 inches nor larger than 8 1/2 x 14 inches. The cover may be of a different color provided the printed material contained thereon shall be legible.

5. No portion of the public offering statement may be underscored, italicized, or printed in larger, heavier or different color type than the remainder of the statement unless required or permitted by the Agency.

§ 5:26-4.4 Filing

Two copies of the proposed public offering statement shall be filed with the application for registration and, if the Agency requires revision to the proposed public offering statement, two copies of the revised public offering statement.

§ 5:26-4.5 Amendment of the public offering statement

(a) Developers shall immediately report to the Agency any material change in the information or documents contained in the public offering statement, with a request for amendments.

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(b) No change in the public offering statement given to prospective purchasers shall be made without having been registered with the Agency.

(c) Amendments and corrections to the public offering statement shall be by replacement of the amended or corrected material by paste-over or permanent means.

§ 5:26-4.6 Review of requests for amendments

The Agency shall process and review requests for amendments of a public offering statement in accordance with the standards and procedures established in this chapter for review of a public offering statement.

§ 5:26-4.7 Use of the public offering statement

(a) The public offering statement shall not be used for any promotional purposes before registration of the development and thereafter only if used in its entirety.

(b) No person shall represent or imply that the Agency approves or recommends the planned real estate development or retirement community.

§ 5:26-5.1 General standards

All advertising which is used by or on behalf of the developer to promote a planned real estate development or retirement community shall be accurate, provable, truthful and not misleading so as to fully inform the public and foster their understanding and trust.

§ 5:26-5.2 Specific standards

(a) Without limiting the general standards of advertising in this chapter, all advertising, except billboards, shall substantially conform to the following specific standards:

1. Advertising that refers to the purchase price of any lot, parcel, unit or interest shall state the full purchase price and shall include any additional assessments or cost to the purchaser;

2. In order to eliminate fictitious pricing or illusory discounts, no certificates shall be distributed indicating that a discount from the advertised price shall be given. This shall not preclude the giving of a discount on the basis of any reasonable criteria;

3. Advertising that contains statements regarding taxes shall not use terms such as "low", "stable" or other descriptive terms, but shall state an accurate estimate of such tax based on the current tax rate, value and ratio;

4. Advertising shall not refer to any common element or facility that does not presently exist unless that fact is prominently stated in the advertising and the proposed date of completion is contained therein;

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5. Any reference to proposed improvements for which the purchaser will be assessed shall clearly set forth the fact of the assessment and the amount of the assessment;

6. Advertising shall not state that items or services are free when the cost thereof is included in the assessment;

7. Advertising shall not contain photographs, sketches or artists conceptions of proposed common elements or facilities unless the fact that the photographs, sketches or artist's conceptions are of proposed common elements or facilities is stated immediately adjacent to them. No sketch or artists' conception may be used in advertising unless it is clearly stated immediately adjacent to such sketch or artist's conception that it is in fact a sketch or artist's conception;

8. Advertising shall not refer in wording, photograph, sketch, or artist's conception to any recreational, medical, social, shopping or other facility that is not located within the planned real estate development or retirement community unless it is clearly stated that such facilities are not located within the planned real estate development or retirement community and the approximate distance therefrom, in miles;

9. Advertising shall not refer to a price increase unless the amount and date of the increase are indicated;

10. Advertising in the form of vacation certificates or other promotions intended to induce prospective purchasers to visit the planned real estate development or retirement community that require the holders thereof to attend or submit to a sales promotion shall clearly and conspicuously state the necessity of attendance at or submission to the sales promotion and the approximate length of time required to be spent by the prospective purchaser at such sales promotion;

11. Any model unit that is used as a part of a promotional plan shall be in substantial conformity with the units that are subsequently constructed unless otherwise noted in the contract of sale. In the event changes are made in construction detail other than landscaping, or in the appliances, heating, air conditioning, electrical or plumbing systems, a legible notice shall be conspicuously placed in the model advising prospective purchasers of the change and explaining the details thereof;

12. In the event there are any items in the model that are available only at additional cost to the purchaser, legible notices informing prospective purchasers that the item is available only at additional cost should be posted in a prominent place in the model.

§ 5:26-6.1 General standards

All contracts or agreements for the disposition of a lot, parcel, unit or interest in a planned real estate development or retirement community shall be fair and reasonable and shall not impose undue restrictions or hardship upon the purchaser.

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§ 5:26-6.2 Cancellation

Any contract or agreement for the purchase of any lot, parcel, unit or interest in a planned real estate development or retirement community may be cancelled without cause, by the purchaser, by sending or delivering written notice of cancellation by midnight of the seventh calendar day following the date on which such contract or agreement was executed.

§ 5:26-6.3 Notice of cancellation

Every contract or agreement shall contain the following notice in 10-point boldface type or larger, directly above the space provided for the signature of the purchaser.

NOTICE TO THE PURCHASER: YOU HAVE THE RIGHT TO CANCEL THIS CONTRACT OR AGREEMENT BY SENDING OR DELIVERING WRITTEN NOTICE OF CANCELLATION TO THE DEVELOPER BY MIDNIGHT OF THE SEVENTH CALENDAR DAY FOLLOWING THE DAY ON WHICH IT WAS EXECUTED. SUCH CANCELLATION IS WITHOUT PENALTY, AND ALL MONIES PAID BY YOU SHALL BE PROMPTLY REFUNDED IN THEIR ENTIRETY.

§ 5:26-6.4 Deposits

All deposits, down payments, or other funds paid to a developer by a purchaser shall be held in a separate trust account in a banking or similar institution located within this State or deposited with any attorney licensed to practice law in this State, until closing or termination of the contract or until a bond or other guarantee acceptable to the Agency is provided. In no event shall the escrow be released before the expiration of the seven day rescission period.

§ 5:26-6.5 Provisions prohibited

(a) It shall be unfair and unreasonable for any of the following clauses or provisions to appear in a contract or agreement for the disposition of a lot, parcel, unit or interest in a planned real estate development or retirement community:

1. A clause or provision necessitating the forfeiture of more than 10 percent of the purchase price plus the cost of any extras installed as liquidated damages in the event of non-compliance;
2. A clause or provision requiring the purchase to close prior to the issuance of a temporary certificate of occupancy on his unit;
3. A clause or provision requiring the purchaser to waive any right granted by the Act or this chapter;
4. A clause or provision requiring the purchaser to close prior to the date specified in the contract;

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5. A clause or provision giving the developer the right of entry in, over or through the purchaser's lot, parcel, unit or interest after closing, other than for construction, repair, emergency matters or by governmental order or requirement;

6. A clause or provision permitting the substitution of materials or equipment by the developer that are not comparable without the prior written consent of the purchaser;

7. A clause or provision requiring the adjustment of taxes, municipal charges, utility rents, hazard insurance premiums, or any other adjustments as of any date other than closing or possession, whichever comes first;

8. A clause or provision giving the developer the right to increase the purchase price of the lot, parcel, unit or interest without requiring 60 days notice to the purchaser of the increase and without allowing the right of rescission within 10 days of said notice;

9. A clause or provision providing that a closing date may be delayed due to circumstances involving weather, strikes, lockouts or other labor disputes involving the developer or the suppliers, delays in the issuance of permits or inspections, or any other similar reasons unless there is a time limit placed on the permissible delay after which the purchaser may terminate the contract without penalty;

10. A clause or provision giving the developer, the association, the governing board of the association or their agents the option of repurchase, the right of first refusal or other similar option or right.

§ 5:26-6.6 Mandatory provisions

(a) Every contract or agreement for the purchase of a lot, parcel, unit or interest in a planned real estate development or retirement community shall contain clauses and provisions to include the following, in addition to the requirement of notice of cancellation as in *N.J.A.C. 5:26-6.3*:

1. A clause or provision providing that all deposits or money paid under the contract or agreement shall be held in escrow until closing or termination of the contract or agreement, or until a bond or other guarantee acceptable to the Agency is provided. There shall also be stated the name of the institution where the escrow account is located or name of the attorney in whose trust account the funds are deposited and the fact that the escrow will exist for at least the seven day rescission period;

2. A clause or provision that if the contract or agreement is subject to a mortgage contingency, the mortgage commitment be obtained within a specific period of time and if it is not obtained within that time, either party may cancel the contract or agreement upon written notice to the other, without penalty;

3. A clause or provision providing for the right of inspection by the purchaser of the lot, parcel, unit or interest prior to closing. Said inspection shall be within a reasonable period of time prior to closing;

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4. A clause or provision providing reimbursement to the purchaser of the cost of title searches or surveys in the event title to a lot, parcel, unit or interest is found to be unmarketable;
5. A clause or provision that the purchaser is receiving a proportionate undivided interest in the common elements and/or facilities and stating what that interest is;
6. A clause or provision stating the type of deed to be given to the purchaser;
7. A statement, near the signature line, stating that the purchaser has received a copy of the public offering statement.

§ 5:26-7.1 Warranty on construction

- (a) The developer of a planned real estate development or retirement community shall warrant the construction of the unit or interest as provided in the New Home Warranty and Builders' Registration Act, c.467, P.L. 1977.
- (b) The developer of a planned real estate development or retirement community shall, in addition to the warranties required under the New Home Warranty and Builders' Registration Act (P.L. 1977, c.467), warrant the following to be free from defect due to material and workmanship for a period of one year from the date of possession or settlement: outbuildings, driveways, walkways, patios, retaining walls, and fences. The developer shall also warrant that all drainage is proper and adequate and that all off site improvements are free from defects for a period of one year from the date of construction.
- (c) Developer shall warrant that all lots, parcels, units or interests are fit for their intended use.

§ 5:26-7.2 Warranty on construction of common facilities

- (a) The developer of a planned real estate development or retirement community shall warrant the construction of the common facilities for a period of two years from the date of the completion of each of the common facilities;
- (b) The developer shall warrant that the common facilities are fit for their intended use;
- (c) The developer shall repair or correct any defect in construction, material or workmanship in the common facilities within a reasonable time after notification of the defect.

§ 5:26-7.3 Warranty as to description

The developer shall expressly warrant that any lot, parcel, unit, interest, or common facility will substantially conform to the model, description or plans used to induce the purchaser to enter into a contract or agreement to purchase unless noted otherwise in the contract.

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§ 5:26-7.4 Nonapplicability

The warranties contained herein are not applicable to conversions.

§ 5:26-8.1 Creation

A developer shall organize, or cause to be organized, an association whose obligation it shall be to manage the common elements and facilities. The association shall be formed on or before the filing of the master deed or declaration of covenants and restrictions and may be formed as a profit or nonprofit corporation, unincorporated association or any other form permitted by law.

§ 5:26-8.2 Powers and duties

(a) Subject to the master deed, declaration of covenants and restrictions or other instruments of creation, the association may do all that it is legally entitled to do under the laws applicable to its form of organization.

(b) The association shall discharge its powers in a manner that protects and furthers the health, safety and general welfare of the residents of the community.

(c) The association shall provide a fair and efficient procedure for the resolution of disputes between individual unit owners and the association, and between different unit owners, that shall be readily available as an alternative to litigation.

(d) All meetings of the association that are required by law to be open to all unit owners shall be held at a location within the development or, if there is no suitable meeting room within the development, at a suitable meeting room either elsewhere in the municipality in which the development is located or in an adjoining municipality.

1. A meeting room shall not be deemed to be suitable if it is not large enough to accommodate a reasonable number of unit owners who might wish to attend an open meeting.

§ 5:26-8.3 Executive board

(a) Subject to the master deed, declaration of covenants and restrictions, by-laws or other instruments of creation, (c) below, and the laws of the State, the executive board may act in all instances on behalf of the association.

(b) The members of the executive board appointed by the developer shall be liable as fiduciaries to the owners for their acts or omissions.

(c) During control of the executive board of the association by the developer copies of the annual audit of association funds shall be available for inspection by owners or their authorized representative at the project site.

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§ 5:26-8.4 Administration and control

(a) Irrespective of the time set for developer control of the association provided in the master deed, covenants and restrictions or other instruments of creation, control of the association shall be surrendered to the owners in the following manner:

1. Sixty days after conveyance of 25 percent of the lots, parcels, units or interests, not less than 25 percent of the members of the executive board shall be elected by owners;

2. Sixty days after conveyance of 50 percent of the lots, parcels, units or interests, not less than 40 percent of the members of the executive board shall be elected by the owners;

3. Sixty days after conveyance of 75 percent of the lots, parcels, units or interests, the developer's control of the executive board shall terminate at which time the owners shall elect the entire executive board.

(b) Notwithstanding (a)1, 2 and 3 above, the developer may retain one member of the executive board so long as there are any units remaining unsold in the regular course of business.

(c) In calculating the above percentages, it is presumed that they are calculated on the basis of the entire number of units entitled to membership in the association.

(d) A developer may surrender control of the executive board of the association prior to the time as specified, provided the owners agree by a majority vote to assume control.

(e) Upon assumption by the owners of control of the executive board of the association, the developer shall forthwith deliver to the association all items and documents pertinent to the association such as, but not limited to a copy of the master deed, declaration of covenants and restrictions, documents of creation of the association, by-laws, minute book, including all minutes, any rules and regulations, an accounting of association funds, association funds, all personal property, insurance policies, government permits, a membership roster and all contracts and agreements relative to the association.

(f) The association, when controlled by the owners, shall not take any action that would be detrimental to the sales of units by the developer and shall continue the same level of maintenance, operation and services as immediately prior to their assumption of controls, until the last unit is sold.

(g) From the time of conveyance of 75 percent of the lots, parcels, units or interests, until the last lot, parcel, unit or interest in the development conveyed in the ordinary course of business the master deed, by-laws or declaration of covenants and restrictions shall not require the affirmative vote of more than 75 percent of the votes to be cast in order to amend the by-laws or rules and regulations.

(h) The developer shall not be permitted to cast any votes allocated to unsold lots, parcels, units or interest in order to amend the master deed, by-laws or any other document for the purpose of changing the permitted use of a lot, parcel, unit or interest, or for the purpose of reducing the common elements or facilities.

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§ 5:26-8.5 Termination of agreements and contracts affecting common elements and facilities

Any contract or agreement affecting the use, maintenance, management or access of the common elements and facilities entered into between the developer and itself or a company owned, operated or controlled by the developer or in which it has a financial interest prior to the owners being entitled to elect a majority of the members of the board, shall not be entered into for a period in excess of one year. Such contracts or agreements shall not be renewed for periods in excess of one year and the association may, at the expiration of any one year period, terminate any further renewals or extensions thereof.

§ 5:26-8.6 Assessments for common expenses

(a) Until such time as the association shall make an assessment for common expenses, the developer shall pay all of the expenses of the common elements and facilities.

(b) When the association has made a common expense assessment, the assessment shall be assessed against the units individually owned and under development in proportion to the benefit derived by the unit from the items included in the budget.

§ 5:26-8.7 Budgets

(a) The association shall, prior to making an annual assessment, prepare and adopt an operating budget which shall provide for any and all common expenses to be incurred during the year as well as adequate reserves for repair and replacement of the common elements and facilities.

(b) No budget prepared by the developer or by the executive board while under the control of the developer shall contain any payment or subsidy by the developer that artificially influences the monthly assessment, unless the details are fully disclosed in the public offering statement to the satisfaction of the Agency.

(c) While the developer maintains a majority of the executive board, the executive board shall have an annual audit of association funds prepared by an independent public accountant, a copy of which shall be delivered to each unit owner within 90 days of the expiration of the fiscal year of the association. The audit shall cover the operating budget and reserve accounts.

(d) Until the expiration of any management contracts entered into while the developer maintains a majority of the executive board, the developer shall insure that a bond, or other guarantee acceptable to the Agency, is posted. For the first year of operation, the bond or other guarantee shall be in an amount equal to the annual budget. For the second year and for succeeding years, the bond or other guarantee shall be in an amount equal to the annual budget plus accumulated reserves. The developer shall provide the agency with such proof of such bond or other guarantee as may be necessary at the time of registration and annually thereafter.

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§ 5:26-9.1 Requirements

(a) In addition to the requirements set forth in *N.J.A.C. 5:26-4.2* (Contents of public offering statement), the developer shall, in the case of conversion from a residential rental or hotel use to a condominium, cooperative, time-sharing venture, or other planned real estate development, include in the public offering statement the following information:

1. The price at which the lot, parcel, unit or interest will be offered;
2. An audited statement of expenses for the property for the past five years or for a shorter period as permitted by the Agency due to extenuating circumstances, certified by an independent public account;
3. An engineering survey, in the form set forth in the appendix, prepared by a licensed professional engineer, which shall include mechanical, structural, electrical and engineering reports to disclose the condition of the building, as well as an energy audit, in a form approved by the Agency, setting forth the energy efficiency of the building.
  - i. The engineer who prepares the survey shall certify to the Agency whether, in his or her judgment, the building is in compliance with the code standards adopted under the Hotel and Multiple Dwelling Law and set forth at *N.J.A.C. 5:10* and with the code standards adopted under the Uniform Fire Safety Act and set forth at *N.J.A.C. 5:18*, and shall list all outstanding violations then existing in accordance with his or her observation and judgment.
  - ii. As provided by P.L. 1991, c.509, the engineer shall be immune from tort liability with regard to such certification and list in the same manner, and to the same extent, as if he or she were a public employee protected by the New Jersey Tort Claims Act.
  - iii. As further provided in P.L. 1991, c.509, in the event of any discrepancy between the engineering survey submitted by the developer and an engineering survey submitted by any tenant(s), the Agency may have another engineering survey done for it at the developer's sole cost and expense.
4. A statement of the effect on prospective owners of the New Jersey Statute Governing Removal of Tenants (*N.J.S.A. 2A:18-61.1 et seq.*), the Senior Citizens and Disabled Protected Tenancy Act (*N.J.S.A. 2A:18-61.22 et seq.*) and, if the building is located in Hudson County, the Tenant Protection Act of 1992 (*N.J.S.A. 2A:18-61.40 et seq.*), and the rules promulgated thereunder at *N.J.A.C. 5:24*.

§ 5:26-9.2 Compliance with statutes and rules governing tenant removal and protected tenancy

- (a) The developer shall conform to the requirements of the New Jersey Statute Governing Removal of Tenants, P.L. 1974, c.49 and P.L. 1977, c.419 (*N.J.S.A. 2A:18-61.1 et seq.*) and the rules promulgated thereunder at *N.J.A.C. 5:24-1.1 et seq.*
- (b) The developer shall conform to the requirements set forth in the Senior Citizens and Disabled Protected Tenancy Act, P.L. 1981, c.226 (*N.J.S.A. 2A:18-61.22 et seq.*) and the rules promulgated thereunder at *N.J.A.C. 5:24-2.1 et seq.*

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(c) If the building is located in Hudson County, the developer shall conform to the requirements of the Tenant Protection Act of 1992, P.L. 1991, c.509 (*N.J.S.A. 2A:18-61.40 et seq.*) and the rules promulgated thereunder at *N.J.A.C. 5:24-3*.

§ 5:26-9.3 Public Offering Statement

(a) Simultaneously with the filing of an application for registration with the Agency, the developer shall serve upon all tenants in the building a copy of the proposed Public Offering Statement and file an affidavit of service with the Agency within 10 days.

1. The proposed Public Offering Statement that is given to the tenants shall contain the following statement on the first page:

THIS IS THE PROPOSED PUBLIC OFFERING STATEMENT SUBMITTED TO THE DIVISION OF CODES AND STANDARDS, DEPARTMENT OF COMMUNITY AFFAIRS, IN AN APPLICATION FOR REGISTRATION TO CONVERT THE BUILDING TO A CONDOMINIUM OR COOPERATIVE. THIS STATEMENT IS SUBJECT TO CHANGE. THE DEPARTMENT OF COMMUNITY AFFAIRS WILL ACCEPT WRITTEN COMMENTS CONCERNING THIS STATEMENT FOR A PERIOD OF 45 DAYS. ALL COMMENTS SHOULD BE ADDRESSED TO:

Department of Community Affairs  
Planned Real Estate Development Section  
Bureau of Homeowner Protection  
PO Box 805  
Trenton, New Jersey 08625-0805

THIS DOCUMENT IS NOT THE FULL PLAN OF INTENTION TO CONVERT AND FULL PLAN OF CONVERSION REQUIRED UNDER THE NEW JERSEY STATUTE GOVERNING REMOVAL OF TENANTS (*N.J.S.A. 2A:18-61.1 et seq.*)

§ 5:26-10.1 Scope

Upon application to and registration by the Agency as provided below, a developer may accept a nominal sum, not to exceed \$ 2,500, which sum shall be held in trust, as a nonbinding reservation for the purpose of determining the market demand for a planned real estate development or retirement community, and shall not be deemed to be an offer or disposition of an interest therein, provided that the developer shall do so under the terms and conditions contained in this subchapter.

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§ 5:26-10.2 Application

(a) Prior to accepting any nonbinding reservation agreements, the developer shall submit an application to the Agency for registration that contains the following information:

1. The name and address of the developer;
2. The location and description of the lands to be developed;
3. The number and types of lots, parcels, units or interests to be contained in the planned real estate development or retirement community as well as a description of the common elements and facilities;
4. The selling price at which each lot, parcel, unit or interest will be offered, together with a general description of the lot, parcel, unit or interest offered at that price and the estimated monthly assessment;
5. The name and address of the person or firm holding the deposits and the name and location of the banking or similar institution wherein the deposits will be deposited;
6. A statement that no lot, parcel, unit or interest will be sold and that no binding agreement will be offered or accepted thereon until the planned real estate development or retirement community is registered with the Agency according to the provisions of this chapter;
7. A copy of the most recent financial statement of the developer, certified to be true and accurate by an independent public accountant;
8. A copy of all advertising material;
9. A copy of the proposed reservation agreement form;
10. Any other material deemed necessary by the Agency in furtherance of the provisions of this chapter.

(b) The application shall be accompanied by a filing fee in the amount of \$ 250.00.

§ 5:26-10.3 Advertising standards

(a) All advertising material shall conform to the provisions of *N.J.A.C. 5:26-5* and in addition shall contain the following:

1. A statement that the purpose of the advertising is to solicit nonbinding reservations;
2. A statement that the nonbinding reservation is not a contract and may be cancelled by the prospective purchaser at any time, without cause;
3. A statement that any money paid to the developer shall be refunded to the prospective purchaser upon request and cancellation of the nonbinding reservation.

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§ 5:26-10.4 Approval of advertising

(a) Prior to the developer using any advertising for nonbinding reservations, it shall be submitted to the Agency for review, and shall be reviewed by the Agency within 30 days.

(b) Upon the affirmative determination of the Agency that the advertising material meets the requirements of *N.J.A.C. 5:26-5* and *N.J.A.C. 5:26-10.3*, the Agency shall notify the developer of such determination.

§ 5:26-10.5 Reservation form

(a) Every developer accepting any nonbinding reservation agreement shall give a reservation form to all prospective purchasers, which shall contain the following items:

1. The name and location of the project;
2. The name and address of the developer;
3. The name and address of the prospective purchaser;
4. A description of the particular lot, parcel, unit or interest reserved;
5. The purchase price and terms;

6. A notice in 10-point bold face type that the nonbinding reservation agreement does not obligate the purchaser in any way, that there is or is not, as the case may be, a guarantee by the developer that the purchase price and terms will not be changed for such period of time as may be specified in the agreement, that there is or is not, as the case may be, a guarantee that the unit, lot, parcel or interest described in the agreement will be built or otherwise made available for purchase by the prospective purchaser, and that he or she may receive a refund of the deposit, upon request, at any time prior to the execution of a contract or agreement of sale;

7. All nonbinding reservation agreements shall be signed by the party reserving the unit and by the developer or the agent of the developer.

8. A statement of the period of time for which the nonbinding reservation agreement is effective.

§ 5:26-10.6 Period of effect

Unless cancelled by the prospective purchaser, the nonbinding reservation agreement shall be effective for a period of time no less than 15 days or, in the case of a conversion, 90 days after notice to the prospective purchaser that the application for registration and public offering statement have been registered by the Agency as provided in this chapter or until the developer withdraws the proposed planned real estate development or retirement community.

§ 5:26-10.7 Notice

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The developer shall give written notice to the prospective purchaser that the application for registration and public offering statement have been registered by the Agency, enclosing a copy of the public offering statement, and notify the prospective purchaser that he or she must enter into a contract or agreement of sale within a specific period of time, no less than 15 days, or the nonbinding reservation will expire and his or her money will be refunded.

§ 5:26-10.8 Nonbinding reservations

The registration of an application to accept nonbinding reservations shall be valid for a period of four months from registration unless an application for registration pursuant to *N.J.A.C. 5:26-3* is submitted during that time, in which event the registration of the application to accept nonbinding reservation shall automatically be extended during the registration period.

§ 5:26-11.1 Administration

The Division of Codes and Standards in the Department of Community Affairs shall administer and enforce these rules. Within the Division, responsibility for administration and enforcement of these rules shall be vested in the Bureau of Homeowner Protection. All powers and responsibilities vested in the Director, Division of Codes and Standards, shall be executed by the Chief, Bureau of Homeowner Protection, subject to supervision by the Director and by the Assistant Director for Construction Code Enforcement, with the exception of the power to make rules and the power to make final determinations resulting from any hearing required or permitted pursuant to law.

§ 5:26-11.2 Complaints and investigations

Any person may, at any time, file a complaint with the Agency concerning any matter subject to the Act or these rules. Said complaint may be written or oral. Nothing in this section shall prevent the Agency from instituting an investigation on its own initiative.

§ 5:26-11.3 Rights to a hearing

Any developer or applicant for registration aggrieved by a notice or order of the Agency issued under the Act or these rules shall be entitled to a hearing before the Office of Administrative Law in accordance with the Administrative Procedure Act, *N.J.S.A. 52:14B-1* et seq. and the Uniform Administrative Procedure Rules, *N.J.A.C. 1:1*, provided that a written request for such hearing is filed within 10 business days of receipt of the notice or order complained of.

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§ 5:26-11.4 Application for hearing

All hearing requests shall be filed with the Hearing Coordinator, Department of Community Affairs, PO Box 802, Trenton, New Jersey 08625-0802.

§ 5:26-11.5 Penalties

(a) The Commissioner, through the Agency, may levy and collect the penalties set forth in the Act after affording the person allegedly in violation an opportunity for a hearing, in accordance with the Administrative Procedure Act, *N.J.S.A. 52:14B-1 et seq.*, on the alleged violations, and after a final determination that said person is guilty of the violation.

(b) When a penalty so levied has not been satisfied within 30 days, the penalty may be sued for and recovered by and in the name of the Commissioner in a summary manner pursuant to the Penalty Enforcement Law (*N.J.S.A. 2A:58-1 et seq.*).

(c) The Agency may, in the interest of justice, compromise any civil penalty if in its determination the gravity of the offense or offenses does not warrant the assessment of the full fine.

§ 5:26-11.6 Consent orders

The Agency may, in its discretion, enter into any consent order, stipulation or settlement in any matter.

§ 5:26-11.7 Applicability

(a) These rules shall be applicable as follows:

1. To any portion of a planned real estate development which did not have on November 22, 1978:

- i. Its building permit or permits; or
- ii. Final municipal approval of its site plan or subdivision plat.

2. To any portion of a planned real estate development, regardless of the issuance of building permits or final municipal approval of its site plan or subdivision plat, that is assessed or taxed as an agricultural or horticultural use pursuant to the "Farmland Assessment Act of 1964", P.L. 1964, c.48 (*N.J.S.A. 54:4-23.1 et seq.*);

3. To any portion of a retirement community, regardless of the issuance of building permits or approval of site plans or subdivision plats and regardless of whether it has been issued a notice of filing pursuant to the Retirement Community Full Disclosure Act, P.L. 1969, c.215 (*N.J.S.A. 45:22A-1 et seq.*) or has been registered pursuant thereto.

4. To any portion of a conversion, regardless of the issuance of building permits or approval of site plans or subdivision plats, that offers its first unit for sale after the effective date of the Act;

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5. To any conversion in which a unit has been offered on or before the effective date of the Act that has 25 or more units remaining unsold;

6. To any developer, its successors and assigns specifically including, but not limited to, purchasers of the developer or the planned real estate development or retirement community and any person, institution or agency that may acquire title.

§ 5:26-11.8 Construction

These regulations shall be construed liberally to effectuate the purposes of the Act and of these regulations.

§ 5:26-11.9 Waiver

The Agency may grant exemptions to this chapter or any part thereof when, in its opinion, the enforcement thereof is unduly burdensome or impractical.

§ 5:26-11.10 Severability

If any provision of this chapter or the application thereof to any person or circumstances is held to be invalid, the invalidity shall not affect other provisions or applications of this chapter which can be given effect and to this end the provisions of this chapter are severable.

§ 5:26-11.11 (Reserved)